

² ALJ Order Denying Medical Treatment (Dec. 21, 2004).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant alleges she suffered personal injury by accident on or about October 1, 2000. Liberty Mutual argues that it did not provide workers compensation insurance coverage to respondent on that date and, therefore, it cannot be held liable for any costs associated with the December 17, 2004 hearing. In its brief to the Board, Liberty Mutual asserts that “Wausau Insurance Company, a wholly owned subsidiary of Liberty Mutual, did provide workers compensation insurance coverage to Premier Health Services from November 11, 1997 through November 11, 1998.”³

Liberty Mutual further admits that neither the ALJ’s December 21, 2004 Order; the ALJ’s December 21, 2004 Order Denying Medical Treatment; nor the transcript of the December 17, 2004 hearing contains an order for Liberty Mutual to pay any costs. “Although not reflected in the transcript or in either order entered by Judge Fuller on December 17 [sic], 2004, the administrative law judge did order Wausau and Liberty Mutual to each pay half the costs of the transcript on December 17, 2004, which totaled \$248.06.”⁴

The Board has examined the administrative file and likewise finds no such order for Liberty Mutual to pay the costs associated with the December 17, 2004 hearing on claimant’s application for preliminary medical treatment benefits. That proceeding was also a hearing on Liberty Mutual’s Motion to Dismiss Liberty Mutual Insurance Company as a Party which was filed on December 15, 2004. Counsel for Wausau Underwriters Insurance Company (Wausau) sent a letter to the ALJ dated December 15, 2004, likewise requesting that it be dismissed from the claim. In that letter, counsel for Wausau stated “Wausau Underwriters Insurance Company had coverage from November 11, 1998, through November 11, 1999. Thereafter, it is my understanding Liberty Mutual picked up coverage.”⁵

At the December 17, 2004 hearing, counsel for Liberty Mutual stated:

We filed an affidavit I believe April of 2001. I would ask the Court to review that affidavit by Debbie Smith. She indicated in her affidavit that Liberty and/or Wausau at that time, at least, Wausau was wholly owned by Liberty Mutual; did provide coverage for Premier for two years from 1997 to November 11th, I believe, of 1999. She gave those policy numbers and no longer did Premier obtain coverage through either Liberty or Wausau.

³ Liberty Mutual’s Brief (filed Feb. 28, 2005) at 1.

⁴ *Id.*

⁵ Wausau’s Letter (dated Dec. 15, 2004) at 1.

And I also want you to review the Commercial Union exhibits presented by Mr. Cunningham. It's Respondent's Exhibit 2 at a *[sic]* that preliminary hearing which shows that Commercial Union did pick up coverage on November the 11th, 1999. It is the very date that Liberty Mutual's and/or Wausau's coverage ended. That coverage then was canceled apparently due to nonpayment of premium and Commercial Union was dismissed.

There is no evidence whatsoever by anyone that Liberty Mutual and/or Wausau had any coverage after November the 11th, 1999. I would suggest that any comment or even suggestion by anybody, including claimant's counsel that they did, would be frivolous.⁶

Counsel for Wausau stated that he agreed with the comments made by counsel for Liberty Mutual and added:

If you're unsure about the insurance coverage issue, I agree with Mr. Malone there's absolutely no indication that Wausau and/or Liberty had coverage after November 11th, 1999. You could dismiss the insurance carriers without prejudice and if for some reason later on the facts turn out to be different than what they appear here today, then Mr. Gurney could bring Wausau and/or Liberty back into the case.⁷

Following the hearing, the ALJ entered two separate orders; one denied claimant's request for medical treatment and the other dismissed Liberty Mutual and Wausau without prejudice. Neither order mentions anything about costs.

K.S.A. 44-525(a) provides that "[e]very finding or award of compensation shall be in writing signed and acknowledged by the administrative law judge and shall specify the amount due and unpaid by the employer to the employee up to the date of the award, if any, and the amount of the payments thereafter to be paid by the employer to the employee, if any, and the length of time such payment shall continue. The award of the administrative law judge shall be effective the day following the date noted in the award."

K.S.A. 44-549(a) provides in part that "[t]he award, finding, decision or order of an administrative law judge when filed in the office of the director shall be deemed to be the final award, finding, decision or order of the administrative law judge."

K.S.A. 2004 Supp. 44-551(b)(1) provides in part that "[a]ll final orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a and amendments thereto made by an administrative law judge shall be subject to review by the board upon written request of any interested party within 10 days."

⁶ M.&P.H. Trans. at 19-20 (Dec. 17, 2004).

⁷ *Id.* at 20.

K.S.A. 2004 Supp. 44-555c(a) provides in part that “[t]he review by the board shall be upon questions of law and fact as presented and shown by a transcript of the evidence and the proceedings as presented, had and introduced before the administrative law judge.”

The appellant, Liberty Mutual, admits that there is no order in the record requiring it to pay one-half of the costs of the December 17, 2004 proceedings. That is the only issue raised by Liberty Mutual in this appeal. The Board finds that in the absence of an order requiring Liberty Mutual to pay costs, the Board is without jurisdiction to review the question raised by Liberty Mutual on appeal. Therefore, the appeal should be dismissed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the appeal by Liberty Mutual from the December 21, 2004 Order and the December 21, 2004 Order Denying Medical Treatment is dismissed.

IT IS SO ORDERED.

Dated this ____ day of June, 2005.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Lawrence M. Gurney, Attorney for Claimant
Terry J. Malone, Attorney for Liberty Mutual Insurance Company
Douglas C. Hobbs, Attorney for Wausau Underwriters Insurance Company
Kendall R. Cunningham, Attorney for Commercial Union Insurance
Bob W. Storey, Attorney for Respondent
D. Shane Bangerter, Attorney for Fund
Pamela J. Fuller, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director